

Application Serial No. 10/695,214  
Response dated April 9, 2007  
Office Action dated February 8, 2007

### REMARKS

Claims 1-16 are currently pending. Claims 17-27 have been withdrawn due to a Restriction Requirement. Proposed amendments for claims 1, 11 and 12 are presented.

In the Office Action, the Examiner:

rejected claims 11 and 12 under 35 USC § 112, second paragraph, as being indefinite;

rejected claims 1, 2 and 11-16 under 35 USC § 102(e) as being anticipated by Hampden-Smith et al. (US Publication No. 2003/0198849); and

rejected claims 3-10 under 35 USC § 103(a) as being unpatentable over the Hampden-Smith Publication.

The Examiner rejected claims 11 and 12 as being indefinite under 35 USC § 112, second paragraph. Applicants have presented proposed amendments to clarify that "said catalyst is for a cathode (or an anode) and said catalyst has a pore size ... ."

The Examiner rejected claims 1, 2 and 11-16 under 35 USC § 102(e) as being anticipated by Hampden-Smith et al. (US Publication No. 2003/0198849). In a response dated November 8, 2006, Applicants asserted that the Hampden-Smith Publication is not proper 102(e) art. Specifically, Applicants noted that the present application claims benefit of a priority date that predates the cited reference. In detail, the present application claims priority as a continuation-in-part from US Application Serial No. 10/327,300, filed on December 20, 2002, and from US Provisional Applications: Serial No. 60/343,700, filed on December 27, 2001, Serial No. 60/390,174, filed on June 19, 2002, and Serial No. 60/412,755, filed on September 23, 2002, via US Application Serial No. 10/327,300. Thus, the earliest relied upon US priority filing date of the present application is December 27, 2001.

In the present Office Action, the Examiner asserts that none of the three provisional applications from which Applicants claim the benefit of priority

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(60/343,700, 60/390,174 and 60/412,755) provide support for the recitation of claim 1, wherein "said crystal [is] about 1 nm to about 4 nm in diameter."

As proposed, amended claim 1 recites "said crystal being about 1 nm in diameter."

Applicants submit that explicit support for amended claim 1 in its entirety is to be found in the provisional applications, each of which predates the filing date of the cited Hampden-Smith Publication. For example, the metal loading of carbon aerogels for use in fuel cell membranes and membrane electrode assemblies (MEAs) finds explicit support at least on page 2 of the '174 Provisional Application. That the carbon aerogel may have a surface area of greater than or equal to 400 m<sup>2</sup>/g finds explicit support at least on page 7 of the '174 Provisional Application. That the carbon aerogel has an average pore size of greater than or equal to 3 nm finds explicit support at least on pages 7 and 10 of the '174 Provisional Application. That a plurality of crystals of metal atoms is dispersed on the aerogel supporting structure, the crystals being about 1 nm in diameter, finds explicit support at least on page 11 of the '174 Provisional Application.

The filing date of the Hampden-Smith Publication is October 24, 2002, which post-dates the current application's US priority date. Thus, the Hampden-Smith Publication is not section 102(e) art.


Applicants submit that claims 1-16 are in condition for allowance. Applicants respectfully request that the Examiner withdraw the rejections and pass the claims to issue.

Should the Examiner have any questions regarding the present application, Applicants respectfully requests that the Examiner contact Applicants' representative at the phone number listed below.

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Applicants believe that no fees are due. Applicants respectfully request that any deficiencies in fees be charged to Deposit Order Account No. 13-0235.

Respectfully submitted,

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